Chapter 5: How Does MEPA Compare With Other State Environmental Policy Acts?

CHAPTER SUMMARY

- State environmental policy acts are creations of individual states and are not mandated by federal law.
- Fifteen states, the District of Columbia, and the Commonwealth of Puerto Rico have adopted state environmental policy acts. Some other states have enacted specific statutes for establishing environmental review procedures for specific activities or activities in specific areas.
- Ten jurisdictions, including Montana, require the environmental review of state actions only. In the other seven jurisdictions, both state and local actions require environmental review.
- Eleven of the seventeen jurisdictions, including Montana, require the environmental review of government permitting actions, but only Montana, Massachusetts, South Dakota, and Wisconsin limit this review to state permitting actions only.
- State environmental policy acts (SEPAs) vary in terms of what sort of action triggers the environmental impact statement process. "Action" or "project" has many different meanings.
- The applicability of the SEPAs to various state actions varies widely. A variety of models are available.
- Most states follow the NEPA model by requiring agencies to prepare an EIS on a major action if the action "may" or "will" have a significant impact on the environment.
- MEPA's threshold for the type of environmental analysis required depends on the significance criteria in the Model Rules.
- Connecticut, Massachusetts, Minnesota, New York, North Carolina, and Wisconsin all use standardized thresholds or categories in the environmental review process.
- No state has developed a specific list of measurable significance criteria by which to gauge the need to prepare an EIS.

- The state environmental policy acts in California, Washington, Minnesota, New York, and the District of Columbia, either by statute or judicial ruling, have "action-forcing" or substantive provisions that require a certain decision or outcome based on the impact information developed in the environmental review process.

- California, New York, Washington, and the District of Columbia do not require, but may allow, private project applicants to conduct and pay the costs of SEPA compliance.

- An attempt to thoroughly analyze the success or efficiency of the various state environmental policy acts was not possible within the constraints of this study.

Chapter 5: How Does MEPA Compare With Other State Environmental Policy Acts?

Other States' Mini-NEPAs - Overview

Senate Joint Resolution No.18 includes a request that the Environmental Quality Council MEPA study include a review and analysis of "the successful and efficient implementation of other similar national and state laws".

Following enactment of the National Environmental Policy Act (NEPA) in 1969 and as of 1999, fifteen states, the District of Columbia, and the Commonwealth of Puerto Rico (**Figure 5-1**) have adopted state environmental policy acts, commonly referred to as SEPAs or mini-NEPAs, which are generally modeled after NEPA (Mandelker, 1999). New Jersey and Michigan implemented NEPA-like environmental review procedures by executive orders, however Michigan's executive order was rescinded in 1991. Texas, New Mexico, and Utah reportedly adopted environmental assessment requirements in the 1970s either by statute or executive order but have since rejected or repealed the requirements (Pendall, 1998). Other authorities indicate that 28 states have enacted NEPA-like environmental impact statement procedures, but only the 17 jurisdictions mentioned here have comprehensive environmental policy acts similar to MEPA (Caldwell, 1998).

Most states did not adopt NEPA verbatim, although many, including Montana's original MEPA, closely followed the federal model. States provided for SEPA implementation by establishing separate organizations or agencies to provide state agencies with guidance or model rules and/or by requiring individual implementing agencies to adopt their own rules, sometimes subject to review by a central authority. NEPA provided for the establishment of the President's Council on Environmental Quality (CEQ). Montana established the Environmental Quality Council within the Legislative Branch and provided it with general oversight responsibilities of the state's implementation of the environmental policy proclaimed in MEPA. In Montana, early MEPA Model Rules were provided to the agencies by the Attorney General's Office. The most recent (1988) Model Rules were developed through the coordinated efforts of the EQC and the state agencies.

In common, the SEPAs require agencies to review certain actions to determine whether they will have any significant impact on the environment. They all require the preparation of detailed reports or statements (EIS) when an agency knows or believes the proposed action may or will have significant environmental impacts. Most have essentially three process steps in common. First, an agency must determine whether or not the action it is taking "triggers" the law and is subject to environmental review.

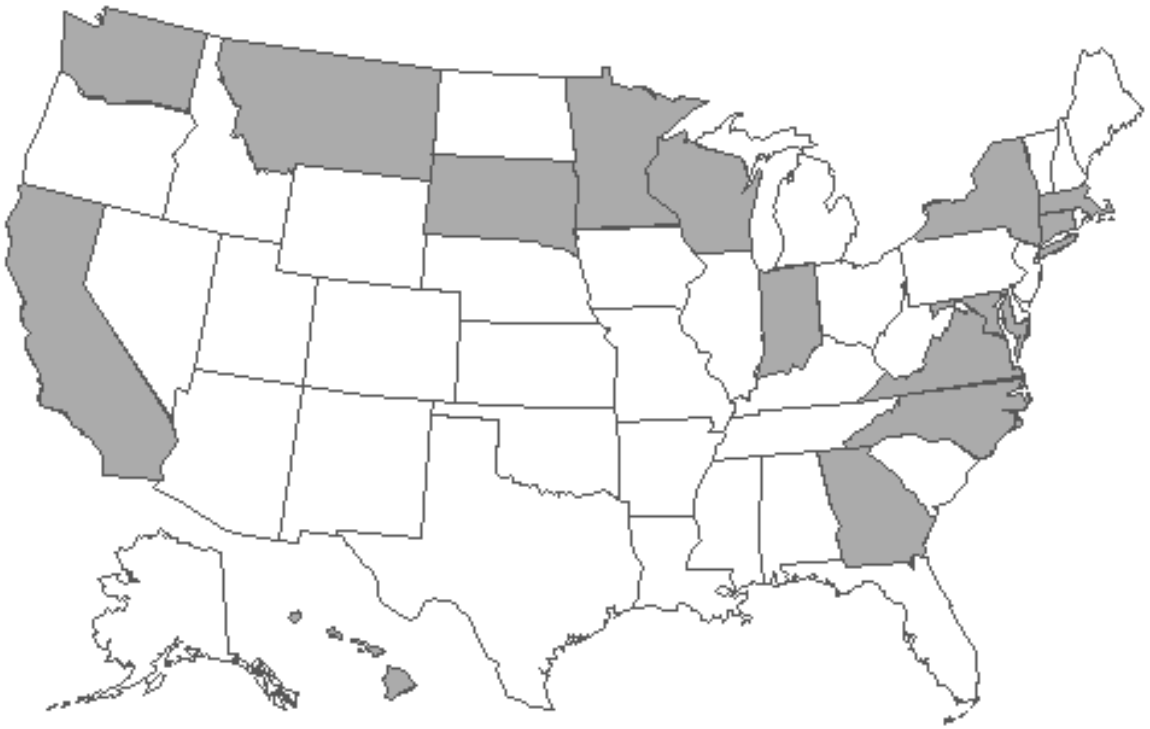

Figure 5-1. Map of States With State Environmental Policy Acts (SEPAs)
The 15 states with NEPA-based state environmental policy acts are shown above.
Puerto Rico and the District of Columbia have also enacted NEPA-based environmental review policies within their jurisdictions.
New Jersey has implemented NEPA-like environmental review procedures by executive order. Several other states (Alaska, Arkansas, Delaware, Florida, Kentucky, Maine, Mississippi, Nevada, Vermont, others) have adopted specific statutes establishing environmental review procedures for specific activities or for activities in specific areas such as coastal zones.

Table 5-1. SEPAs (State Environmental Policy Acts) - General Application and EIS Triggers

STATE	Law since	SEPA applies to projects undertaken/funded by:		SEPA applies to projects permitted by:		EIS is required for actions that:		
		state only	state and local agencies	state only	state and local agencies	may significantly affect environment	significantly affect environment	and are major
NEPA	1970	federal		federal			x	x
California	1970		x		x	x		
Connecticut	1971	x				x		x
District of Columbia	1989		ordinance		x			
Georgia	1991	x				x		
Hawaii	1974		x		x	x		
Indiana	1972	x					x	x
Maryland	1973	x					x	
Massachu-setts	1972	x		x			x	
Minnesota	1973		x		x	x		x
Montana	**1971**	**x**		**x**			**x**	**x**
New York	1976		x		x	x		
North Carolina	1971	x					x	
Puerto Rico	1970		x		x		x	
S. Dakota	1974	x		x				
Virginia	1973	x					x	
Washington	1971		x		x	x		x
Wisconsin	1971	x		x			x	x

* All 17 state environmental policy acts (SEPAs) require environmental review of state-initiated actions.
* 10 jurisdictions, including Montana, require environmental review of state actions only. In 7 other jurisdictions, state and local actions require review.
* 11 of the 17 jurisdictions, including Montana, require review of government permitting actions, but only Montana, Massachusetts, South Dakota, and Wisconsin limit this review to state permitting actions only.
* Montana's threshold for conducting an EIS is that the action is a **major** state action and the impacts **will**, not may, significantly affect the environment.

If so, then the agency must determine, by some process, whether or not the action exceeds some threshold that results in significant impacts or will result in a finding of no significant impact. The MEPA and rules describe this as the environmental assessment or EA process. Finally, if there are significant effects or the possibility of significant effects, the action is then subject to a detailed environmental review, the EIS in Montana, that identifies and discusses anticipated impacts and reviews alternatives. The EA process can be eliminated entirely if the significance of the impacts is such that an EIS is triggered by the project or if other mandatory thresholds are exceeded. A further discussion of how the various SEPAs address common topics of the environmental review process is provided below in "State Environmental Policy Acts - Functional Comparisons".

Beyond what the SEPAs have in common, their applicability varies widely (**Table 5-1**). All seventeen jurisdictions require environmental analysis of certain state actions, and seven of them (California, the District of Columbia, Hawaii, Minnesota, New York, Puerto Rico, and Washington) require environmental reviews of certain local actions. Six of the SEPAs (Connecticut, Georgia, Indiana, Maryland, North Carolina, and Virginia) specifically exclude state-issued permits from environmental analysis. However, the remaining eleven jurisdictions, including Montana, plus the federal NEPA require state-issued or federal-issued permits to be subject to review. Additionally, seven of these eleven SEPAs require that certain permits issued by local governments be subject to environmental review. Of the eleven jurisdictions that require environmental review of certain permits, only Montana, Massachusetts, South Dakota, and Wisconsin do not extend the requirement to locally issued permits (Sigford, 1993)

The applicability of the SEPAs to various state actions varies widely as well. For example, in South Dakota, the environmental review of state actions is voluntary and there is no provision for an environmental assessment; only a detailed statement or environmental impact statement. A further summary of the state environmental policy acts is provided in pages 76-85, "A Brief Synopsis of State Environmental Policy Acts".

State Environmental Policy Acts - Functional Comparisons

Actions That Don't Trigger the SEPA Process

All mini-NEPAs and NEPA exempt ministerial actions, such as sporting permit issuance and issuance of driver's licenses, and ministerial funding disbursements. The definition of ministerial varies between states, particularly in the area of building permits, which in some states have been argued as not fitting the definition of ministerial. Most states have SEPA exemptions for emergencies and provisions for identifying categorical exclusions for certain actions that could be excluded from review. Some states simply list these actions arbitrarily and others first require a SEPA review process such as the programmatic environmental review or rule listing required by MEPA. In conducting a SEPA review to identify what categories of action typically meet certain criteria that qualify them to be

categorically excluded from further environmental analysis or review, several states, including Montana, also require the identification of situations when the exclusions would not apply; exceptions to the categorical exclusion. In several states these involve categorically excluded actions that are proposed to occur in locations generally described as "environmentally sensitive areas", which may or may not be specifically defined. Most states, including Montana, have also provided for specific statutory exemptions from SEPA review.

Entering the Environmental Impact Statement Process - Triggers

State environmental policy acts vary in terms of what sort of action triggers the environmental review process. NEPA requires the review of major federal actions significantly affecting the environment. Statutes in Montana, Indiana, and Wisconsin have similar or identical language in regard to major state actions. Other states have lowered the trigger to those projects that "may", instead of "will", significantly affect the environment. The definitions of "project" or "action" vary greatly among the states and are discussed briefly in pages 76-85, “A Brief Synopsis of State Environmental Policy Acts”.

Most states and NEPA require some type of environmental assessment procedure to identify whether or not a detailed statement (EIS) is required. Exceptions are the District of Columbia, Maryland, South Dakota, and Virginia. South Dakota's environmental review process is voluntary and only provides for an EIS, Virginia requires an EIS only on state construction projects that exceed $100,000, Maryland requires analysis only on certain state legislative and budget proposals, and the District of Columbia requires an EIS for construction projects that cost more than $1 million. Montana requires the preparation of an EIS whenever an EA determines that one is necessary or whenever the proposed action is a major state action significantly affecting the quality of the human environment based on the significance criteria of Model Rule IV.

Standardized or Mandatory Thresholds

Connecticut, Massachusetts, Minnesota, New York, North Carolina, and Wisconsin all use standardized thresholds or categories in the environmental review process. Some states separate actions into Type I actions (or some other designation), Type II actions, and so forth. Actions that meet these standardized thresholds may require an EA, a detailed EA, or an EIS. In these states, the law or rules generally require agencies to prepare lists of actions for which one type of review or another will be utilized. Some states require a third-party review (e.g., Minnesota's Environmental Quality Board) and acceptance of agency determinations, while other state lists are subject to public review and comment. The "action" definition in some states limits environmental reviews to specific projects (state construction) or projects exceeding a certain cost. Others have established arbitrary thresholds related to the size of projects that trigger the preparation of SEPA documents. For example, in large cities, Minnesota requires an EA for new warehouse construction exceeding 600,000 square feet in size, but an EIS is mandatory if the warehouse exceeds 1.5 million square feet.

The federal Council on Environmental Quality guidelines for federal agencies implementing NEPA require agencies to adopt procedures that include specific criteria for and identification of typical classes of action that (1) normally do not require an EIS; (2) normally may be categorically excluded from review; and (3) normally require an EA but not necessarily an EIS.

MEPA provides three different levels of environmental review--categorical exclusion, environmental assessment, and environmental impact statement. MEPA's thresholds for the type of environmental analysis required depend on the significance criteria in the Model Rules. The preparation of each document is based on the significance of the potential impacts of the proposal. The MEPA Model Rules allow for agencies to define (list), through rule or through the preparation of a programmatic environmental review, those actions that could be categorically excluded. Otherwise, the threshold for conducting a MEPA review is any major state action that significantly affects the quality of the human environment. The terms "action" and "human environment" are defined in the Model Rules. Model Rule IV sets forth the criteria for subjectively determining significant impacts.

Significance

A determination of the significance of the potential impacts of an action is common to all SEPA processes. A significant effect under NEPA may be direct, indirect, or cumulative. MEPA uses the terms primary, secondary, and cumulative. Most states follow the NEPA model in requiring agencies to prepare an EIS on a major action if the action may or will have a significant impact on the environment, although the definition of "action" varies. The determination of whether or not an impact will be significant is left to the agency and identified through the review process, which usually includes the input of others. No state has developed a specific list of **measurable** significance criteria by which to gauge the need to prepare an EIS (Sigford, 1993). The determination of "how significant" is typically subjective and left to the judgment of the agency or the interpretation of the courts. The criteria that must be considered in determining the significance of an action are spelled out in statute or rules. Montana agencies gauge significance based subjectively on the proposed action's impact on a variety of criteria, including the frequency, geographical extent, severity, and duration of the impacts, the project's growth-inducing or growth-inhibiting impacts, its relationship to other cumulative impacts, impacts on unique environmental characteristics and resources and the societal value of those resources, establishment of undesirable precedents, and the degree to which the action may conflict with other laws, rules, or plans. (See Model Rule IV.)

The Environment

In considering impacts affecting the environment, some states have defined the term "environment" in various ways. Georgia limits environmental review to impacts on air, water, land, plants, animal, historical sites or buildings, and cultural resources. Indiana, Massachusetts, and Minnesota are similarly restrictive. Washington limits its review to the natural and built environment. California restricts review to the physical environment but

allows agencies to weigh the indirect social or economic effects when considering whether or not the effect on the physical environment is significant. This is similar to the language of NEPA.

Montana, Hawaii, Maryland, and Connecticut all require the evaluation of at least some economic and social effects. The term in Montana's MEPA and its rules is "human environment" and it "includes, but is not limited to biological, physical, social, economic, cultural, and aesthetic factors". Economic and social impacts alone do not trigger an EIS, but if one is prepared, those factors must be discussed.

Who Pays for Environmental Analysis?

Agencies that propose agency-initiated projects pay the costs of SEPA compliance in every case. In those 11 states that require SEPA compliance for governmental permitting of private actions, none specifically provide that the state is liable for the costs. The implication, at least, is that the applicant is responsible for some or all SEPA compliance and review costs. Many states go beyond the implication. Minnesota has a detailed formula for recovering its review costs.

Massachusetts requires SEPA compliance for state-issued private project permits and also requires that the applicant prepare and submit the initial environmental document. A state review board then determines whether or not an EIS is necessary, and the applicant is also responsible for those costs.

California, New York, Washington, and the District of Columbia do not require, but may allow, private project applicants to conduct and pay the costs of SEPA compliance. None of these states allow private project applicants to make determinations on significance of impacts, and most assess an agency review fee. Neither Hawaii nor Puerto Rico address cost recovery, although both reportedly allow applicants to prepare their own EISs. Of the other states that require EISs on private sector projects, only NEPA and Minnesota, Montana, South Dakota, and Wisconsin specifically require the agencies to prepare the EISs themselves or hire consultants to do so.

Montana requires that the state or its consultants conduct the environmental review process and that the applicant pay only the costs of gathering data and information up to a statutory limit for those projects that require an EIS costing more than $2,500. If an agency intends only to file a negative declaration of impacts for the project, the agency absorbs all costs. Arguably, MEPA does not allow the state to recover the cost of reviewing MEPA documents. Unless costs can be tied to the cost of gathering data and information for the preparation of an EIS, Montana agencies absorb the costs of complying with the scoping, contract management, document reviews, public meetings, comment response, and other procedural costs of complying with MEPA. Montana's metal mine reclamation laws, Title 82, chapter 4, part 3, MCA, do include specific language that authorizes the state to recover MEPA document review costs.

Effectiveness

An attempt to analyze the success or efficiency of the various state environmental policy acts was not made due to time limitations. A thorough analysis of each SEPA could be a separate effort similar to the MEPA study requested in SJR 18. It is often difficult to correlate a particular policy or statute to specific measurable outcomes. In determining the effectiveness of the mini-NEPAs, outcomes are especially difficult to measure. A set of objective criteria would first need to be established to comparatively measure the effectiveness of the various statutes, and data common to all state programs would have to be available. If the former could be developed by the Subcommittee, it does not appear that the latter is available in many cases.

If the number of environmental assessments or environmental impact statements produced in each state were used as a measure of the effectiveness of a SEPA program, some figures are available. However, because many states have no central reporting requirement for EAs or EISs as in Montana, the figures are suspect and incomplete. Even Montana's EQC MEPA database is not totally complete as it relies on the agencies' compliance with the notification requirements and a consistency of data entry over time by both the agencies and the EQC. Also, because of the wide variation between the applicability requirements of the state SEPAs, environmental reviews are not always required on the same actions from state to state. Finally, total numbers of environmental reviews will vary due to state populations and levels of project activity.

A survey of states conducted by Sigford (1993) reported that for the years 1990-1993, California and New York reported that thousands of EAs were prepared annually but that there was no central reporting requirement. Indiana and Puerto Rico failed to report, and Georgia's law was not enacted until 1991. Connecticut kept no records, and the SEPAs for Maryland, the District of Columbia, South Dakota, and Virginia do not provide for an EA process. For those that reported, Wisconsin averaged 106 EAs annually for the time period, Minnesota 120, North Carolina 177, Hawaii 310, Montana 338, Massachusetts 393, and Washington 7,105.

In terms of the annual average numbers of EISs produced in SEPA states during the 1990-1993 time period, the report shows the following: the District of Columbia 0, South Dakota 1, Montana 2 (EQC database shows 15; **Chapter 3**, **Table 3-6**), Georgia 3, North Carolina 3, Wisconsin 3, Connecticut 3, Minnesota 6, Hawaii 18, Virginia estimates 60, Indiana estimates 80, Washington 119, Massachusetts 176, New York 260, and California 838.

These figures do not reflect the current situation, any legislative changes to the SEPAs since the survey, or any changes in the administrative implementation of the laws. They are only comparable for the time period. The projects for which these documents were prepared obviously vary depending on the triggers in the individual laws, the SEPA thresholds of significance, and the impacts of the individual projects themselves.

Do states with SEPAs have better or worse environmental conditions than other states because of or in spite of the law? Do states with very active SEPAs have improved environmental circumstances over other states? Is there a relationship between a state's economic viability and the presence or active implementation of a SEPA? These questions are beyond the scope and time limitations of this study, but they may provide an interesting thesis for others to pursue.

From an empirical standpoint, a measure of the effectiveness of NEPA and the mini-NEPAs can be gained by a crude review of the legislative history of the laws in the states that have SEPAs (**Table 5-1**). Since the 1969 passage of NEPA, most of the states that enacted mini-NEPAs still have them. This is not to say that they haven't been subject to periodic review or legislative amendment, usually in response to judicial rulings or particularly contentious projects. NEPA itself has been the subject of frequent congressional oversight hearings. On the other hand, since the early 1970s, only New York (1976), the District of Columbia (1989), and Georgia (1991) have added overarching environmental review policy acts. However, both the District of Columbia and Georgia statutes are limited in their application to specific actions. Other states without full environmental review programs or SEPAs often require environmental analysis of specific proposals through specific statutes or through statewide or regional planning statutes.

At least three recent reports on the subject of state or federal environmental policy act effectiveness are available: *The National Environmental Policy Act - A Study of Its Effectiveness After Twenty-five Years*, Council on Environmental Quality, January 1997; *Paperwork or Protection? A Comparative Assessment of State Environmental Policy Acts*, Minnesota Center for Environmental Advocacy, December 1993; and *Fixing CEQA - Options and Opportunities for Reforming the California Environmental Quality Act*, Landis, et. al, California Policy Seminar, 1995. The SEPA analyses for this chapter relied upon these reports, staff contacts with other state officials, and staff review and analysis of SEPAs from other states.

The 1997 Council on Environmental Quality report on NEPA's effectiveness concludes that, overall, NEPA is a success in that it requires an advance analysis of the potential environmental consequences of federal actions and in that it brings the public into agency decisionmaking like no other federal statute. It also concludes that there are substantial opportunities to improve the effectiveness and efficiency of the NEPA process and that the CEQ is "embarking on a major effort to reinvent the NEPA process". With a recent change in CEQ administration, however, this may no longer be a priority issue according to one source (Kemmis, 1999).

The Minnesota and California reports were documents that analyzed and compared state mini-NEPAs with the purpose of identifying ways to conduct environmental reviews of certain actions in the most efficient manner (Minnesota) and identifying specific ways to improve the overall environmental review process (California). Both state reports conclude with specific recommendations for improving their state environmental policy acts.

A Brief Synopsis of Other State Environmental Policy Acts

The following is a brief summary of state mini-NEPA laws, including those from the jurisdictions of the District of Columbia and the Commonwealth of Puerto Rico. New Jersey currently has a mini-NEPA by executive order. The states of Maine, Vermont, and Florida are among other states that require the environmental review of certain specific actions under planning or other statutes. Those listed below are only those NEPA-like statutes that have a full environmental review program similar to the Montana Environmental Policy Act, although their applicability varies. Included in the summaries are some comparisons with MEPA.

NEPA - Effective in 1970. The National Environmental Policy Act is implemented through federal CEQ rules and guidelines and individual agency NEPA rules. NEPA applies to major federal actions, including actions conducted, financed, regulated, or approved by federal agencies and rules, plans, policies, procedures, and agency proposals for legislation that will have significant impacts on the environment. Courts have ruled that any action with significant environmental impacts is major. As in MEPA, unless a project is reviewed and determined to be categorically excluded, EAs are prepared to determine the significance of an action, unless it is obvious that an EIS is needed. Agency rules may determine what classes of action require what type of review. As in MEPA, an EA must consider alternatives and impacts. No public participation is needed for EAs. If a Finding of No Significant Impact (FONSI) can not be declared, then either a mitigated EA (FONSI) or an EIS must be prepared. An EIS must include mitigation measures, but courts have ruled that agencies are not responsible for implementing mitigation measures. Mitigated FONSIs are enforceable. An EIS means the "detailed statement" referred to in the statute. As in MEPA, the EIS process is publicly noticed and the document is prepared by an agency or an agency's consultant. A minimum 45-day DEIS comment period is required in the regulations. An agency response to comments on the DEIS is required. The record of decision explains the analysis and decision, including the preferred alternative. Programmatic EISs are allowed. The NEPA is not "action-forcing" in that it requires agencies to select a particular course of action. The U.S. Supreme Court has established that NEPA is procedurally enforceable in several rulings. Congress has exempted certain regulatory programs of the EPA (Clean Air Act, Federal Water Pollution Control Act, Toxic Substances Control Act) because of specific programmatic requirements that provide functional equivalence to NEPA.

California - CEQA was enacted in 1970. It requires an environmental impact report similar to the federal EIS, including mitigation measures and a description of growth-inducing effects. CEQA applies to both state agencies and local governments. It requires environmental review of state or local actions that may have significant environmental impacts, including the review of discretionary permitting actions by state or local agencies that may have significant environmental impacts. Permit applicants bear the costs of environmental assessments. CEQA includes detailed provisions governing the preparation of the impact report and for judicial review. Statutory terms are defined in rule. Unlike NEPA and MEPA, CEQA is "action forcing" in that it provides that agencies should not approve projects with significant unmitigated impacts if there are feasible alternatives. Like MEPA, CEQA uses significance criteria for determining impacts and environmental review document types. More environmental review documents are prepared in California than in any other state.

Connecticut - The state CEPA was adopted in 1971 and has been amended several times since. The law requires environmental review of only state or state-funded actions that may have a major impact on state physical resources. Each agency must develop for review and approval a listing of actions that are subject to a particular type of environmental analysis. An EA is required for a specific listing of activities in order to dtermine the significance of the environmental impacts. Either a FONSI is issued or an EIE (EIS) is prepard by the agency. Environmental reviews apply only to specific state activities listed in each agency's environmental classification document.

District of Columbia - The environmental policy statute has been effective since 1989. It applies to major actions by district officials, including permitting decisions. The term "action" is limited to projects costing more than $1 million unless the mayor determines that there are likely to be imminent and substantial effects on the public health, safety, and welfare. An EIS is required for major actions likely to have significant impacts on the physical environment. For permitting actions, the applicant may be required to prepare the EIS and reimburse the government's review costs. The district law is "action-forcing". The agency may substitute or require an alternative action or require mitigation measures if the alternative or mitigated action will accomplish the same purposes with minimized or no adverse environmental effects. Otherwise, the action may be denied if there are unmitigated negative impacts.

Georgia - Georgia has the most recent SEPA law, which was passed in 1991. The law applies only to state actions defined as land-disturbing activities conducted by a state agency or funded 50% or more by a state grant, to the proposed sale or exchange of 5 or more acres of state land, or to the proposed harvesting of more than 5 acres of trees from state land. The law has no policy statement; only findings of need for state stewardship of the physical and cultural environment. Guidelines were developed by DNR for use by other state agencies. If by taking an agency action it is "probable to expect a significant adverse impact on the natural environment", then the statutory threshold for conducting a review is triggered. An Environmental Effects Report (EER/EIS) is required unless a FONSI can be prepared. The statute requires analysis of alternatives and mitigation measures. Following comment, the decision may be to proceed, to proceed with mitigation, or to not proceed. It also implies that the law is procedural only and declares that the final decision to proceed with an agency action "shall not create a cause of action" by any person provided that the procedural notice and hearings provisions have been followed.

Hawaii - Hawaii has had a SEPA, patterned after NEPA, since1974. The law is administered by the state Office of Environmental Quality Control. Hawaii's SEPA applies to state and local actions, including permits, but limits the term "action" to specific activities. SEPA is closely tied to state planning efforts. Hawaii has state land use planning and mandatory comprehensive planning in its four counties. An environmental assessment is not required if the project is consistent with a county comprehensive plan unless it is located in an environmentally sensitive area that is defined. A 15-member citizen's Environmental Council appointed by the Governor advises agencies and adopts administrative rules. There are eight specific triggers that can require an environmental assessment, relating mostly to land uses in specific locations or the reclassification of land uses. Significance criteria are used to determine the level of environmental review. Private applicants may be allowed to produce EIS documents. There are specific time limits for document review and for initiating judicial review proceedings challenging agency decisions.

Indiana - The Indiana Environmental Policy Act was enacted in 1972. A primary author of NEPA, Lynton Caldwell, is a professor at Indiana University. The state law is similar in text and terminology to NEPA and MEPA except that it applies only to state actions by state agencies that will significantly affect the quality of the environment. The state issuance of permits or licenses is expressly exempt from the law. Terms are defined in agency rules. An EA determines the need for an EIS. Agency rules include the form and substance of the EA, which appears as an EA checklist. Proposed state actions likely to be "highly controversial from an environmental standpoint" may be a justification for the preparation of an EIS. Agency boards for air, water, and solid waste are responsible for defining actions that constitute a major state action significantly affecting the environment.

Maryland - Maryland has had a SEPA since 1973. The law applies to state agency actions only and not to state-issued permits. It has broad NEPA-like policy language but also a very restrictive "action" definition. "Proposed state action" means requests for legislative appropriations or other legislative action that will alter the quality of air, land, or water resources. State actions regarding secondary roads are exempt. Guidelines for state agencies are issued by the Secretary of Natural Resources. The statute includes a statement that "each person has a fundamental and inalienable right to a healthful environment". A subsequent court case restricted this language, finding that the Legislature did not intend to create new or enlarged personal actionable rights under the law.

Massachusetts - The state law was enacted in 1972. As in MEPA, the law requires environmental review for state, but not local, permitting actions. The state or the project applicant is required to prepare the Environmental Notification Form (ENF or EA), which is reviewed by a separate state review agency (the Secretary of the Office of Environmental Affairs). That agency then determines whether or not the applicant will prepare an EIS based on whether or not the project exceeds mandatory EIS thresholds of magnitude or impact (22% of EAs in 1990-1993 became EISs). The applicant is responsible for the preparation of the EIS document as well but does not pay for the state agency's review costs. A previous state fee of $300 was dropped for not being sufficient to make the collection worthwhile. The law includes mandatory thresholds for conducting EAs and EISs and provides for agency discretion regarding significance determinations. Unique to Massachusetts, the threshold for preparing an EIS is not a finding of significant environmental impact, but a finding that the proposal may "damage" the environment. "Damage to the environment" is defined by rule. Also, unique to Massachusetts and Minnesota, citizens can petition the government to require the preparation of an EA. No state provides for the preparation of an EIS by citizen petition. Massachusetts requires a significant number of environmental review documents each year, and the law is actively implemented. In 1992, 69 EISs were produced in the state, ranking it fourth behind California, New York, and Washington (Landis, 1995). Montana prepared EISs on five projects in 1992 according to the EQC database.

Minnesota - The state SEPA was enacted in 1973, was amended significantly in 1980, and is patterned after NEPA. It requires environmental review of actions and permitting at both the state and local level. Minnesota does not prepare many EISs annually; about the same number as Montana for 1991-1993. An EIS is triggered when a proposal exceeds a mandatory threshold provided in rules or when impacts identified in an EA may be significant. Using this agency discretion threshold,1.4% of EAs in 1990-1993 became EISs. Citizens may petition for the preparation of an EA in cases in which the agency determines that an action will not exceed the document threshold, but when citizens can show the potential for significant impacts. Minnesota's law contains "action-forcing" language that prohibits significant environmental impacts that cause or may cause pollution or damage "so long as there is a feasible and prudent alternative consistent with reasonable requirements". This provision is reportedly seldom used although it appears to provide substantive authority to the law.

Montana - MEPA was enacted in 1971 and is closely patterned after the NEPA model. It requires an environmental assessment for state actions and state-permitted actions only, which is similar to SEPAs in South Dakota, Massachusetts, and Wisconsin (and NEPA for federal actions). The triggers for the preparation of environmental reviews are major state actions that significantly affect the environment. Definitions are provided in rule. The thresholds for MEPA document preparation are the significance criteria found in the agency rules. There are provisions for categorical exclusions to MEPA review. As in most states, MEPA has a two-stage environmental review process--an EA on nonexcluded projects and an EIS if impacts are found to be significant. Permit applicants pay the costs of EIS preparation over $2,500 up to a statutory limit that is based on the estimated cost of the project. MEPA documents are prepared by the state or the state's contractors.

New York - The New York SEPA law was enacted in 1976; it follows the NEPA model. It is one of the most implemented SEPAs in the country. The law requires state and local agencies to prepare environmental reviews that address mitigation, growth-inducing, and energy impacts on government and private permitting actions that may have a significant impact on the environment. Terms are defined in statute. Judicial decisions have provided that the law has "action-forcing" (substantive) authorities by requiring an obligation to consider and impose practicable mitigation measures. Before approval of an action subject to an environmental review, agencies must make an explicit finding that any identified adverse effects will be minimized or avoided and that alternatives are chosen that minimize or avoid as many adverse environmental effects as possible and practicable. The rules have thresholds for activities requiring review. Actions are categorized by type in rules--Type I actions usually require an environmental review and may require an EIS, and Type II actions usually do not. Beyond this initial screening, the agencies rely on a significance test for determining impacts and the need for further environmental analysis. An EIS is required for all Type I actions that may have significant impacts and on all uncategorized actions that do not result in a negative declaration, a mitigated negative declaration, or a finding of no significant impact.

North Carolina - The SEPA was enacted in 1971 and modeled after the language in NEPA. The law was adopted with sunset provisions that were removed in 1991. It applies only to state agency actions and not to permitting, except in the case of local government units that require a state permit or the state funding of major local developments having significant impacts. Local governments may establish an EIS process for major developments, public or private, within their jurisdiction. Up through 1995, only one local government had used the authority. A central agency, the Department of Administration, is responsible for model regulations, receipt and circulation of environmental review documents, training of state officials, and coordinating and reviewing the establishment of minimum threshold criteria by state agencies. Statute and rules define "action". Agencies, by rule, develop specific minimum criteria that designate minimum levels of environmental impact. Actions below the threshold receive no review (categorical exemption). If an action is above the threshold, an EA is needed, as in Montana, to determine if a FONSI, mitigated FONSI, or EIS is necessary. The law requires only an analysis and discussion of significant adverse effects.

Puerto Rico - Puerto Rico has had a SEPA since 1970. Its purpose, policy, and goals language is reportedly identical to NEPA. It applies to actions that will significantly affect the environment. Action taken by commonwealth (state) and local agencies and permits issued by both governments are included. The federal CEQ rules are used as guidance, including the use of the significance criteria for document threshold determination. A commonwealth agency similar to the federal CEQ has authority to approve regulations for the implementation of the law and also has the authority to review EISs and reject them for inadequacy.

South Dakota - The South Dakota SEPA was enacted in 1974 and is similar to the NEPA model language, but it has no policy statement and no overarching statement of purpose or goals. Early guidance was provided by the state Department of Environmental Protection. Like Montana, the law provides for the environmental review of state actions, including state-permitted actions, but in South Dakota, the review is only voluntary. Agencies "may" prepare NEPA-like environmental reviews that address criteria such as mitigation measures and growth-inducing aspects. Courts have held that the state law cannot be used to force the agencies to prepare an environmental review. The law is not aggressively implemented. Few environmental reviews have been produced, and the law has not been actively litigated.

Virginia - The Department of Environmental Quality, Office of Impact Review, coordinates Virginia's responses to environmental documents prepared for state and federal projects. The law was effective in 1973. It does not follow the NEPA model. Only major state projects, which are defined as those that involve the acquisition of an interest in land for the construction or expansion of a state facility and that cost more than $100,000, are subject to environmental review. Other specific state statutes require the preparation of an environmental review document for the operation or expansion of public airports, mineral exploration or mining of state lands, drilling permits in the Tidewater area, and certain highway projects. DEQ distributes the documents to state and local agencies, summarizes the comments, and makes recommendations. DEQ reports reviewing about 100 environmental review documents each year. Implementation is through a procedures manual. No EAs are produced, and significance is not a threshold for determining the type of environmental analysis required. The statute defines what activities are to be reviewed and what information is to be included in the environmental impact report. Environmental impacts are to be addressed, including impacts on wildlife habitat, unavoidable adverse impacts, proposed mitigation measures, alternatives to the construction project, and irreversible environmental changes because of the project.

Washington - The state has had a mini-NEPA law since 1971 that was nearly identical to NEPA. Former U.S. Senator Henry Jackson was one of the primary sponsors of NEPA. The state law was subject to bipartisan studies in 1983, 1994, and 1995, and legislative changes have altered it from its original form. The SEPA applies to actions by both state and local agencies and includes state and local permitting decisions. Following California and New York, Washington has one of the more actively implemented SEPAs. In 1996, the law was amended to integrate the SEPA process with the permitting and growth management activities required by the state's Growth Management Act (GMA). If the GMA rules and regulations consider the environmental impact and mitigation measures of a project, then SEPA is satisfied. In any event, the review of the project under both laws and the issuance of permits are to be integrated and not segregated. Washington's SEPA was judicially granted substantive authorities that allow for the denial or conditioning of projects. Subsequent legislative changes have limited that authority to conditioning projects based on previously established agency rules or policies and not based on circumstances first identified in a project's environmental review. Terms are defined in statute and rule. Environment includes natural and "built" (infrastructure). The law includes language that the "legislature recognizes that each person has a fundamental and inalienable right to a healthful environment". Unlike the Maryland Supreme Court, the Washington Supreme Court has stressed the importance of this language and has referenced its applicability in state rulings. Except for the preparation of an EIS, rules specify time limits for threshold determinations, document preparation, and reviews. The threshold for determining if an EIS is required is whether or not a project may have a significant adverse environmental impact. During the initial review (EA), a project's impacts may be nonsignificant, may be mitigated to nonsignificance, or may be significantly adverse and require an EIS. Permits and project approvals may be conditioned or denied based upon information resulting from the SEPA document.

Wisconsin - The state SEPA was enacted in 1971 and modeled after NEPA, directing state agencies to substantially follow the guidance developed by the federal CEQ for NEPA. The law lacks procedural guidance, and most implementation details are found in agency rules. As in MEPA, the law requires an environmental review of major state actions, including state permitting actions significantly affecting the quality of the human environment. Like Minnesota and Massachusetts, the Wisconsin law includes the provision for mandatory thresholds for conducting environmental reviews. An EIS is required when the EIS threshold is met or at the agency's discretion when an EA shows there may be significant impacts (agency discretion required an EIS for 0.3% of total EAs in 1990-1993). The DNR agency rules list categories of actions (Type I through Type IV) that require a certain minimum of environmental review. Type I category actions are major actions that would significantly affect the environment, triggering an EIS, and include such actions as the state acquisition of over 1,000 acres and converting its basic land use, new electric generation facilities over 20 megawatts, new metal ore refineries, certain metal mine permitting (greater than 160 acres or 5 million tons of ore), or new waste disposal facilities of a certain size (80 acres or 1 million tons of waste). Type II actions always require an EA and may require an EIS depending on the significance of the impacts. Type III actions do not normally require an EA but may need a checklist review, and Type IV actions are generally categorically excluded from review. The rules are fairly detailed. For private actions requiring state approval, the state DNR rules allow the agency to require the applicant to prepare and submit an environmental impact report describing the proposed activity, sometimes in great detail (1,000 pages or more) to assist the state agency in its environmental review process. Wisconsin prepared a similar number of EISs as in Montana for 1991-1993. The DNR completed 5 EISs (all on power plants) and 77 EAs in fiscal year 1999.